

CITY OF HUNTINGTON PARK

City Council Meeting Agenda

Tuesday, July 18, 2017

REGULAR AGENDA

ITEM 5.

“ATTACHMENT A”

DRAFT Professional Services Agreement for VOIP Services with Lan Wan Enterprise, Inc.



**VOICE OVER INTERNET PROTOCOL TELEPHONE SYSTEM SERVICES
AGREEMENT
LAN WAN**

THIS VOICE OVER INTERNET PROTOCOL (“VOIP”) TELEPHONE SYSTEM SERVICES AGREEMENT (“Agreement”) is made and entered into this ____ day of July, 2017 (hereinafter, the “Effective Date”), by and between the CITY OF HUNTINGTON PARK, a municipal corporation (“CITY”) and LAN WAN ENTERPRISE, INC., a California corporation (hereinafter, “CONSULTANT”). For the purposes of this Agreement CITY and CONSULTANT may be referred to collectively by the capitalized term “Parties.” The capitalized term “Party” may refer to CITY or CONSULTANT interchangeably.

RECITALS

WHEREAS, on or about December 1, 2016, the Parties executed and entered into that certain agreement titled, LAN WAN Professional Services Agreement (hereinafter, the “Master Agreement”) which is attached hereto as Exhibit “A”; and

WHEREAS, the Master Agreement provides that CONSULTANT, at the City’s sole discretion, shall install and implement a new state of the VOIP telephone system and new telephones at no additional cost to the CITY;

WHEREAS, the City informed CONSULTANT of its decision to exercise its discretion under the Master Agreement to authorize CONSULTANT to install, implement and maintain a VOIP telephone system for the City.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

I.
ENGAGEMENT TERMS

1.1 SCOPE OF SERVICES: Subject to the terms and conditions set forth in this Agreement CONSULTANT shall install and implement a new VOIP telephone system and new telephones at no cost to the CITY. Additionally, CONSULTANT

shall provide telephone service to the CITY for \$4,833 per month. The telephone service provided by CONSULTANT will include telephone services, user licenses, maintenance, and technical support. The telephones used by the CITY shall be leased to the CITY **[MORE INFO NEEDED. WHO AND HOW MUCH??]**. All equipment other equipment that is necessary for the implementation of the VOIP telephone system shall be purchased by the CITY through the Master Agreement.

CONSULTANT further agrees to furnish to CITY all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in this Agreement. [Insert Name for Project Administrator] shall be CONSULTANT's project administrator and shall have direct responsibility for management of CONSULTANTS's performance under this Agreement. No change shall be made in CONSULTANT's project administrator without CITY's prior written consent

- 1.2 TERM: This Agreement shall commence on the Effective Date and shall expire five (5) years from the Effective Date.
- 1.3 COMPENSATION: The CITY shall pay CONSULTANT \$4,833 per month.
- 1.4 PAYMENT OF COMPENSATION: Unless subject to a dispute, invoices are payable within forty-five (45) calendar days after receipt of a correct invoice that complies with the requirements of this Agreement. CONSULTANT shall submit an invoice to CITY no later than the fifteenth (15th) working day following the last day of the month during which the services were provided, in the form approved by CITY. Any charges added for a particular invoice period following the invoice deadline will be improper and void, and the CITY will not be obligated to pay any such amounts, and will not be deemed to be in breach in the event that the CITY refuses to pay such amounts. Notwithstanding the foregoing, the CONSULTANT may refund any overcharges with respect to any invoice at any time. Invoices shall describe in detail, the services performed, including time and materials, the specific equipment that was serviced, the date of performance and the associated time for completion for each task. Block billing, which is the practice of assigning a one-time charge to multiple tasks, is prohibited.
- 1.5 ACCOUNTING RECORDS: CONSULTANT shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable the CITY to evaluate the cost and the performance of such services. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principals. The CITY shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records. The CONSULTNAT shall maintain such books and records and make them available

to the CITY for inspection and audit at mutually convenient times for a period of three (3) years from this Agreement's date of termination.

- 1.6 ABANDONMENT BY CONSULTANT: In the event CONSULTANT ceases to perform the work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Services, CONSULTANT shall deliver to CITY immediately and without delay, all materials, records and other work product prepared or obtained by CONSULTANT in the performance of this Agreement. Furthermore, CONSULTANT shall only be compensated for the reasonable value of the services, tasks and other work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which CITY may incur as a result of CONSULTANT'S cessation or abandonment.

II.
PERFORMANCE OF AGREEMENT

- 2.1 COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONSULTANT agrees to work closely with CITY staff in the performance of services under this Agreement and shall be available to CITY staff and the CITY Representatives at all reasonable times. All work prepared by CONSULTANT shall be subject to inspection and approval by CITY Representatives or their designees.
- 2.2 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONSULTANT represents, acknowledges and agrees to the following:
- A. CONSULTANT shall perform all work skillfully, competently and to the highest standards of CONSULTANT'S profession;
 - B. CONSULTANT shall perform all work in a manner reasonably satisfactory to the CITY;
 - C. CONSULTANT shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code section 1090 and the Political Reform Act (Government Code section 81000 *et seq.*);
 - D. CONSULTANT understands the nature and scope of the work to be performed under this Agreement as well as any and all schedules of performance;
 - E. All of CONSULTANT'S employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONSULTANT; and

F. All of CONSULTANT'S employees and agents (including but not limited SUB-CONSULTANT) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to CITY for copying and inspection.

2.3 ASSIGNMENT: CONSULTANT shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without CITY's prior written consent, and any attempt to do so shall be void and of no effect. CITY shall not be obligated or liable under this Agreement to any party other than CONSULTANT.

2.4 CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONSULTANT: The work shall be performed by CONSULTANT or under CONSULTANT'S strict supervision. CONSULTANT will determine the means, methods and details of performing the work subject to the requirements of this Agreement. CITY retains CONSULTANT on an independent CONSULTANT basis and not as an employee. CONSULTANT reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONSULTANT'S competent and timely performance of the work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of CITY's confidential or proprietary information.

Any additional personnel performing the work under this Agreement on behalf of CONSULTANT are not employees of CITY and shall at all times be under CONSULTANT'S exclusive direction and control. CONSULTANT shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, Social Security and Medicare payments and the like. CONSULTANT shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like. CONSULTANT and all persons retained or employed by CONSULTANT shall have no authority, express or implied, to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, CITY, whether by CONSULTANT or otherwise, unless such authority is expressly conferred to CONSULTANT under this Agreement or is otherwise expressly conferred by CITY in writing

2.5 COMPLIANCE WITH LAWS: CONSULTANT shall keep itself informed of and in compliance with all applicable federal, state or local laws to the extent such laws control or otherwise govern the performance of the work. CONSULTANT'S

compliance with applicable laws shall include without limitation compliance with all applicable Cal/OSHA requirements.

- 2.6 NON-DISCRIMINATION: In the performance of this Agreement, CONSULTANT shall not discriminate against any employee, CONSULTANT, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.

III. INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the work, CONSULTANT will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONSULTANT shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONSULTANT shall procure and maintain Commercial General Liability Insurance (“CGL Coverage”) as broad as Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and CONSULTANT liability.
 - B. Automobile Liability Insurance: CONSULTANT shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than Two Million Dollars (\$2,000,000.00) per accident for bodily injury and property damage.
 - C. Workers’ Compensation Insurance / Employer’s Liability Insurance: A policy of workers’ compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONSULTANT and CITY against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONSULTANT in the course of carrying out the work contemplated in this Agreement.
 - D. Cyber Liability Insurance: CONSULTANT shall procure and maintain Cyber Liability Insurance with a limit of no less than One Million Dollars

(\$1,000,000). This insurance will cover information security and privacy liability.

- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONSULTANT shall be primary to any coverage available to CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONSULTANT'S insurance and shall not contribute with it.
- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONSULTANT officers, employees, agents, CONSULTANT or SUB-CONSULTANT from waiving the right of subrogation prior to a loss. CONSULTANT hereby waives all rights of subrogation against CITY.
- 3.6 VERIFICATION OF COVERAGE: CONSULTANT acknowledges, understands and agrees, that CITY's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding CITY's financial well-being and, indirectly, the collective well-being of the residents of the CITY. Accordingly, CONSULTANT warrants, represents and agrees that it shall furnish CITY with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to CITY in its sole and absolute discretion. **The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the CITY if requested.** All certificates of insurance and endorsements shall be received and approved by CITY as a condition precedent to CONSULTANT'S commencement of any work. Upon CITY's written request, CONSULTANT shall also provide CITY with certified copies of all required insurance policies and endorsements.

IV. INDEMNIFICATION

- 4.1 The CITY and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnitees")

shall have no liability to the CONSULTANT or any other person for, and the CONSULTANT shall indemnify, defend and hold harmless Indemnitees from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which Indemnitees may suffer or incur or to which Indemnitees may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of the CONSULTANT's performance of or failure to perform any services under this Agreement or by the negligent or willful acts or omissions of the CONSULTANT, its agents, officers, directors, Subcontractors or employees, committed in performing any of the services under this Agreement, or resulting from a Subcontractor's performance of or failure to perform any services under this Agreement, but excluding such Claims or liabilities arising from the sole active negligence or willful misconduct of CITY or CITY Personnel. In connection therewith:

(a) CONSULTANT shall defend any action or actions filed in connection with any such Claims or liabilities, and shall pay all costs and expenses, including attorney's fees incurred in connection therewith.

(b) CONSULTANT shall promptly pay any judgment rendered against City or any City Personnel for any such Claims or liabilities.

(c) In the event CITY and/or any CITY Personnel is made a party to any action or proceeding filed or prosecuted for any such damages or other Claims arising out of or in connection with the CONSULTANT's and/or a Subcontractor's performance or failure to perform any Services under this Agreement, CONSULTANT shall pay to CITY any and all costs and expenses incurred by CITY or CITY Personnel in such action or proceeding, together with reasonable attorney's fees and expert witness fees..

V. TERMINATION

5.1 Termination Prior to Expiration of Term. This Agreement may be terminated, prior to the expiration of its term, only in the following manner:

(a) By the written mutual agreement of the Parties hereto; or

(b) By the CONSULTANT, with cause, upon thirty (30) days written notice to the CITY, and compliance with this Section 5.2 of this Agreement; or

(c) By the CITY, with cause, upon thirty (30) days written notice to the CONSULTANT, pursuant to this Section 5.2 of this Agreement.

- 5.2 Termination for Cause. If a Party provides a notice of termination for cause, the Party that is not in breach may terminate this Agreement on the date specified in the written notice of termination if the Party in breach of contract does not resolve the breach within thirty (30) days of receipt of written notice.

The non-breaching Party may withdraw its written notice of termination within five (5) business days of delivering such notice to the other Party. If the CONSULTANT is the breaching Party, the CITY may also extend the period during which the CONSULTANT will continue to provide the services (in whole or part) to allow for any delay in the termination plan schedule or a later effective date of termination.

The CITY shall pay the CONSULTANT for services performed through the effective date of termination.

The terminating Party shall have all rights and remedies generally afforded by law or equity, subject to the limitations expressed in this Agreement. Such termination will proceed in an orderly manner, as soon as practical or in accordance with the schedule agreed to by the CITY and the CONSULTANT.

VI.
MISCELLANEOUS PROVISIONS

- 6.1 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONSULTANT or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONSULTANT without prior written consent by CITY. CITY shall grant such consent if disclosure is legally required. Upon request, all CITY data shall be returned to CITY upon the termination or expiration of this Agreement. CONSULTANT shall not use CITY's name or insignia, photographs, or any publicity pertaining to the work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of CITY.
- 6.2 NOTICES: All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONSULTANT:
LAN WAN ENTERPRISE, INC.
17500 Red Hill Ave. Suite 120
Irvine, CA 92614-5680

CITY:
City of Huntington Park
Public Works Dept.
6550 Miles Avenue
Huntington Park, CA 90255
Attn: Daniel Hernandez
Phone: (323) 584-6320

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepaid and addressed to the Party at its applicable address.

- 6.3 GOVERNING LAW AND VENUE: This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Los Angeles County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Central District of California located in the City of Los Angeles, California.
- 6.4 ATTORNEYS' FEES: If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.
- 6.5 SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.
- 6.6 NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.
- 6.7 CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.8 SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.9 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to CITY approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.10 CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.

6.11 **ENTIRE AGREEMENT:** This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between CITY and CONSULTANT prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this Agreement shall be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.9, above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

CITY OF HUNTINGTON PARK:

LAN WAN ENTERPRISE, INC.:

By: _____
Edgar P. Cisneros
City Manager

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
City Attorney

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